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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/242,254 05/07/99 FORSSMANN

W FORSSMANNETA

HM22/0301

EXAMINER

COLLARD & ROE  
1077 NORTHERN BOULEVARD  
ROSLYN NY 11576

BASKAR, P

ART UNIT	PAPER NUMBER
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8

1645  
DATE MAILED:

03/01/00

**Please find below and/or attached an Office communication concerning this application or proceeding.****Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No. 09/242,254	Applicant(s) FORSSMANN ET AL
	Examiner Padma Baskar	Group Art Unit 1645

Responsive to communication(s) filed on \_\_\_\_\_

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle* 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claim

Claim(s) 1-13 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-13 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: ENGLISH TRANSLATIONS OF FED GERMANY 8/13/1996 AND 6/16/1997 FOREIGN A.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 7

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

**-- SEE OFFICE ACTION ON THE FOLLOWING PAGES --**

Art Unit: 1645

**DETAILED ACTION**

1. The Group and/or Art Unit of U.S. Patent application S.N. 09/242,254 has changed. In order to expedite the correlation of papers with the application please direct all future correspondence to Technology Center 1600, Art Unit 1645.

***Priority***

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file. However, the examiner has not received English translation for foreign documents, June 16, 1997 and August 13, 1996. Until such time, priority is under consideration.

***Information Disclosure Statement***

3. Information disclosure statement is considered and signed by the examiner.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rejected as being vague and indefinite for the recitation of "condition". It is not clear to the examiner what are the meets and bounds of "condition"?

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Claim 1 is rejected as being vague and indefinite for the recitation of "hypotheses". It is not clear to the examiner what the applicant wants to point out. This is a method of detection and it is not based on any hypothesis.

Claim 1 is rejected as being vague and indefinite for the recitation of "reference". It is not clear to the examiner what are the meets and bounds of "reference"? Is this a positive control or a negative control? Or applicant wants to compare the results to a known standard reference?

Claim 4 is rejected as being vague and indefinite for the recitation of " corresponds to that of dipeptides". It is not clear to the examiner how measurement of low molecular weight peptides corresponds to that of dipeptides? What are these dipeptides?

Claim 11 is rejected as being vague and indefinite for the recitation of " derived". In order to derive a sample from genetically engineered or transformed and/or conditioned organisms there are several steps to obtain such sample. What are those steps?

Claim 12 and 13 are rejected as being vague and indefinite for the recitation of "hypotheses". It is not clear to the examiner what the applicant wants to point out. This is a method of detection and it is not based on any hypothesis.

***Claim Rejections - 35 USC § 102 or 103***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-4, 8, 10, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Harry et al, 1989 (Clinical Microbiology Reviews, Vol 2, pages 241-249).

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Claims are directed to a method for detecting the condition of an organism through the measurement of peptides from a sample containing high and low molecular peptides.

Harry et al disclose a method for detecting HIV p24 antigen by using commercially available capture assays from a sample ((see page 241 and Table 1). The prior art anticipates the claimed invention

8. Claims 1-4, 8, 10, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Ausubel et al 1995 (Short Protocols In Molecular Biology, Chapter on analysis of proteins ).

Claims are directed to a method for detecting the condition of an organism through the measurement of peptides from a sample containing high and low molecular peptides.

Ausbel et al disclose a number of methods for protein analysis in Chapter 10. For example Immunoaffinity Chromatography, Reversed-Phase High-Performance Liquid Chromatography. All these methods are used to detect high and low molecular weight peptides in a sample, (see pages 10-54-10-58; 10-64-10-69). The prior art anticipates the claimed invention.

9. Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Jimenez et al 1994 (Journal of Neurochemistry; Vol 62; pages 404-407).

Claims are directed to a method for detecting the condition of an organism through the measurement of peptides from a sample containing high and low molecular peptides by mass spectrometry.

Jimenez et al disclose a method, matrix-assisted laser desorption ionization mass spectrometry (MALDI-MS) technique for identifying neuronal peptides with low molecular weights from snails (see experimental procedures and figure 2 and 3). The prior art anticipates the claimed invention.

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***Status of Claims***

10. No claims are allowed.
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Padma Baskar whose telephone number is (703) 308-8886. The examiner can normally be reached on Monday through Friday from 6:30 AM to 4 PM EST

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Caputa, Ph.D can be reached on (703) 308-3995. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Padma Baskar Ph.D

2/25/2000

*AC*  
ANTHONY C. CAPUTA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600